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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 4th February, 2021

No. 13/1/9764-HII(2)-2021/1421.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28-7-2004, the undersigned hereby publish the following award bearing reference No. 97/2017, dated 15-01-2021 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, U.T., Chandigarh between :—

SUKUMAR, S/O SHRI JIWAN SANT RAM, R/O 1536, MAULI COMPLEX, MAULI JAGRAN, CHANDIGARH (Workman)

AND

A.K. CHADHA JEWELLER, S.C.O. NO.7, 1ST FLOOR, SECTOR 22-D, CHANDIGARH THROUGH ITS PROPRIETOR/PARTNERS (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter called 'ID Act'*).

2. Case of the workman in brief is that he was appointed as Jewellery Maker by the management during October 1994. On 31.08.2015 the management illegally terminated his services without any charge sheet, notice, inquiry and paying any compensation. Last drawn wages of the workman was ₹ 22,000/- per month. After the termination of services of the workman, the management retained the junior workers in the service and appointed fresh workers. The workman had worked for more than 240 days with the management within twelve months preceding his date of termination. The workman was covered under Mediclaim Policy of The New Assurance Company Limited. The policy note issued to the workman bearing No. 350100/34/8/11/00000/780. The workman was covered under LIC Policy and his policy number is 161838173. On 15.01.2021, the workman admitted in the General Medical College & Hospital, Sector 32, Chandigarh. The work against which the workman was appointed was of perennial nature and post against which he was appointed has not been abolished so far by the management. There have been more than 10 workers in the establishment of the management. Neither ESI scheme nor EPF scheme was made applicable on the workman by the management. The workman is still unemployed since his date of termination despite his best efforts to

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search the job. The workman is entitled to reinstatement in service with continuity of service and full back wages of the intervening period. Ultimately, it is prayed that the workman be reinstated in service with continuity of service and full back wages of the intervening period.

3. The management contested the case of the workman and filed written statement raising preliminary objection that there is no relationship of employer-employee existed between the workman and the answering management. On merits, it is pleaded that the workman was never engaged by the answering management at any point of time in any capacity so there is no question of his alleged termination, wages drawn by him, retaining of the juniors and appointment of fresh workers. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed.

4. The workman filed replication reiterating the averments of his case and denied the averments made in the written statement. From the pleadings of the parties, following issues were framed :—

1. Whether there is no employer-employee relationship between the management and workman ? OPM
2. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
3. Relief.

5. In support of the case, closed the evidence. On the other hand, the management failed to lead any evidence despite several opportunities as such the evidence of the management was closed by order.

6. I have heard learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

ISSUE No. 1 & 2 :

7. Both these issues are taken by together to avoid repetition of discussion. In support of his case, the workman examined himself as AW1 and tendered into evidence his affidavit Exhibit 'AW1/A' wherein he deposed that he was appointed by the management as Jewellery Maker in the month of October 1994 and he remained in continuous and uninterrupted employment of the management upto 30-08-2015 when his services were terminated by refusing work without assigning any reason and notice on 31-08-2015 when he went to attend his normal duties. At the time of termination, he was drawing ₹ 22,000/-per month as wages. He further deposed that he was covered under Mediclaim Policy of New Assurance Company Limited and was issued policy No. 350100/34/8/11/00000/780 which is Exhibit 'AW2'. He is also covered under LIC policy bearing No.161838173 Exhibit 'AW3' and he also got a ration card Exhibit 'AW4'. He also deposed that due to cardiology attack he was admitted in Government Medical College & Hospital, Sector 32, Chandigarh. The discharge certificate and follow up card is Exhibit 'AW5'. He further deposed that more than 10 workers were working at the time of his termination and the management had retained the junior at the time of termination and appointed new person in his place.

8. Learned representative for the workman has argued that he was employed with the management and he was illegally terminated by the management. He argued that the management intentionally denying the employer-employee relationship to evade its legal liabilities towards the workman. Exhibit 'AW2' to 'AW4' clearly reflects the address of the workman "SCF No. 7, Sector 22-D, Chandigarh", which is the address of the management. He prayed for decided both these issues in favour of the workman and against the management.

9. Learned representative for the management has argued that the claim of the workman is highly misconceived and totally based on lies as there is no relationship of employer-employee existed between the parties. The workman was never appointed by the management at any point of time. He argued that Exhibit 'AW2' & 'AW4' has no help to the workman as the same has no connection with the management and does reflect the name of the management as employer of the workman. He further argued that Exhibit 'AW3' i.e. LIC policy premium renewal receipt also does not prove that the workman was employee of the management

as therein it is only mentioned that 'care of A. K. Chadha Jeweller'. He prayed for dismissal of the claim of the workman.

10. I have very thoughtfully considered the rival contention of both the sides and I find that the workman is claiming that the workman is alleging that his services were illegally terminated by the management whereas the management is denying the employer-employee relationship between it and the workman. No doubt during the course of arguments the management pleaded that no employer-employee relationship exists between the management and workman but has not led any evidence in support of its contention, however, it for the workman to prove his case himself by standing on his own legs. As per claim statement he was appointed as Jewellery Maker in the month of October 1994 and drawing wages of ₹ 22,000/- per month and his services illegally terminated by the management on 31.08.2015. During the evidence the workman has placed on record only Exhibit 'AW2' i.e. identity card issued by The New India Assurance Corporation Limited under Mediclaim Policy, Exhibit 'AW3' i.e. premium renewal receipt of LIC, Exhibit 'AW4' i.e. Discharge & Follow-up card of Government Medical College & Hospital, Sector 32, Chandigarh and Exhibit 'AW5' i.e. Ration Distribution Card. In Exhibit 'AW2' and 'AW4' does not prove in any way that the workman was employee of the management as the same does not reflect the name of the management as employer of the workman. In Exhibit 'AW3' only address of the workman is mentioned as care of the management i.e. "SH. SUKUMAR SANDRA, C/O A. K. CHADHA JEWELLER, SCO 7, 1ST FLOOR, SECTOR 22-D CHANDIGARH" and in Exhibit 'AW5' address of the workman is mentioned as SCF 7, Sector 22-D, Chandigarh. Merely placing on record these documents does not prove that there was any relationship of employer-employee between the management and workman as no attendance register, wages register, appointment letter, no details of cheques vide wages were paid to the workman and termination letter was placed on record by the workman. No efforts were made by the workman to summon the above said record from the management and to summon his any co-worker to prove his version that he was employed with the management. So the workman has failed to prove that there was no relationship of employer-employee between the parties. Once the relationship with the parties is not proved issue No. 2 has become redundant. Accordingly, issue No. 1 is decided against the workman and in favour of the management and issue No. 2 is decided accordingly.

RELIEF :

11. In the light of findings on the issue No.1 above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.). . .,

The 15th January, 2021.

(ANSHUL BERRY),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory Chandigarh.
UID No. PB0095

Secretary Labour,
Chandigarh Administration.

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